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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

Docket No. DHS-2011-0110

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security

U.S. Citizenship and Immigration Services – 016 Electronic Immigration System-3

Automated Background Functions System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of an updated and reissued system of records titled, “Department of Homeland Security/U.S. Citizenship and Immigration Services – 016 Electronic Immigration System-3 Automated Background Functions System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the “Department of Homeland Security/U.S. Citizenship and Immigration Services – 016 Electronic Immigration System-3 Automated Background Functions System of Records” from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

EFFECTIVE DATE: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Donald K. Hawkins (202-272-8000), Privacy Officer, U.S. Citizenship and Immigration

Services, 20 Massachusetts Avenue NW, Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) published a notice of proposed rulemaking in the Federal Register, 76 FR 60385, September 29, 2011, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/USCIS 016 Electronic Immigration System-3 Automated Background Functions System of Records. The DHS/USCIS 016 Electronic Immigration System-3 Automated Background Functions system of records notice was published concurrently in the Federal Register, 76 FR 60059, September 28, 2011, and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

Public Comments

DHS received no comments on the NPRM or SORN and will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5--DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. §101 et seq.; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. §301.

Subpart A also issued under 5 U.S.C. §552. Subpart B also issued under 5 U.S.C. §552a.

2. Add at the end of Appendix C to Part 5, the following new paragraph “65”:

Appendix C to Part 5 – DHS Systems of Records Exempt From the Privacy Act

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65. The DHS/ USCIS – 016 Electronic Immigration System-3 Automated Background Functions System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/ USCIS – 016 Electronic Immigration System-3 Automated Background Functions System of Records is a repository of information held by USCIS to serve its mission of processing immigration benefits. This system also supports certain other DHS programs whose functions include, but are not limited to, the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/ USCIS – 016 Electronic Immigration System-3 Automated Background Functions System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. This system is exempted from the following provisions of the Privacy Act pursuant to 5 U.S.C. § 552a(k)(2); 5 U.S.C. §§ 552a(c)(3);

(d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Additionally, many of the functions in this system require retrieving records from law enforcement systems. Where a record received from another system has been exempted in that source system under 5 U.S.C. § 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule. Exemptions from these particular subsections are justified, on a case-by-case basis determined at the time a request is made, for the following reasons:

- (a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.
- (b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and/or reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a

record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records, or otherwise setting up procedures pursuant to which individuals may access and view records pertaining

to themselves in the system, would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: November 2, 2011.

Mary Ellen Callahan

Chief Privacy Officer,

Department of Homeland Security.

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